



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2016-0455; FRL-9956-41-Region 3]

Determination of Attainment of the 2012 Annual Fine Particulate Matter Standard; Pennsylvania; Delaware County Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a final determination that the Delaware County, Pennsylvania moderate nonattainment area (the Delaware County Area) has attained the 2012 annual fine particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). This determination of attainment, also known as a clean data determination, is based upon quality assured, certified, and complete ambient air quality monitoring data showing that this area has monitored attainment of the 2012 annual PM_{2.5} NAAQS based on the 2013-2015 data available in EPA's Air Quality System (AQS) database. As a result of this determination, the requirements for the Delaware County Area to submit an attainment demonstration, associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning state implementation plan (SIP) revisions related to attainment of the standard shall be suspended for so long as the area continues to meet the 2012 annual PM_{2.5} NAAQS. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on [insert date 60 days after date of publication in the Federal Register] without further notice, unless EPA receives adverse written comment by [insert date

30 days after date of publication in the Federal Register]. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R03-OAR-2016-0455 at <http://www.regulations.gov>, or via email to pino.maria@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Gavin Huang, (215) 814-2042, or by e-mail at huang.gavin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On December 14, 2012, EPA promulgated a revised primary annual PM_{2.5} NAAQS to provide increased protection of public health from fine particle pollution (the 2012 PM_{2.5} NAAQS). 78 FR 3086 (January 15, 2013). In that action, EPA strengthened the primary annual PM_{2.5} standard, lowering the level from 15.0 micrograms per cubic meter (mg/m³) to 12.0 mg/m³. The 2012 PM_{2.5} NAAQS is attained when the 3-year average of the annual arithmetic means does not exceed 12.0 mg/m³. *See* 40 CFR 50.18. On December 18, 2014 (80 FR 2206), EPA made designation determinations, as required by CAA section 107(d)(1), for the 2012 PM_{2.5} NAAQS. In that action, EPA designated the Delaware County Area as moderate nonattainment for the 2012 annual PM_{2.5} NAAQS. *See* 40 CFR 81.339.

Under EPA's longstanding Clean Data Policy,¹ which was codified in EPA's Clean Air Fine Particulate Implementation Rule (72 FR 20586, April 25, 2007), EPA may issue a determination of attainment after notice and comment rulemaking determining that a specific area is attaining the relevant standard. *See* 40 CFR 51.1004. The effect of a clean data determination is to suspend the requirement for the area to submit an attainment demonstration, RACM, RFP plan, contingency measures, and any other planning SIPs related to attainment for as long as the area continues to attain the standard.

EPA issued the Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements on July 29, 2016 (effective October 24, 2016). 81 FR 58010

¹ "Clean Data Policy for the Fine Particle National Ambient Air Quality Standards," Memorandum from Stephen D. Page, December 14, 2004.

(August 24, 2016). In that rule, EPA reaffirmed the Clean Data Policy at 40 CFR 51.1015, as follows:

Upon a determination by EPA that a moderate PM_{2.5} nonattainment area has attained the PM_{2.5} NAAQS, the requirements for the state to submit an attainment demonstration, provisions demonstrating that reasonably available control measures (including reasonably available control technology for stationary sources) shall be implemented no later than 4 years following the date of designation of the area, reasonable further progress plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended until such time as: (1) The area is redesignated to attainment, after which such requirements are permanently discharged; or, (2) EPA determines that the area has re-violated the PM_{2.5} NAAQS, at which time the state shall submit such attainment plan elements for the moderate nonattainment area by a future date to be determined by EPA and announced through publication in the **Federal Register** at the time EPA determines the area is violating the PM_{2.5} NAAQS. *See* 40 CFR 51.1015.

II. EPA's Evaluation

Under EPA regulations at 40 CFR part 50, §50.18 and appendix N, the annual primary PM_{2.5} standard is met when the 3-year average of PM_{2.5} annual mean mass concentrations for each eligible monitoring site is less than or equal to 12 µg/m³. Three years of valid annual means are required to produce a valid annual PM_{2.5} NAAQS design value. A year meets data completeness requirements when quarterly data capture rates for all four quarters are at least 75 percent from eligible monitoring sites. *See* 40 CFR part 50, appendix N. There is one PM_{2.5} monitor in the Delaware County Area. Table 1 shows the Delaware County Area design value for the 2012

annual PM_{2.5} NAAQS for the years 2013-2015 at the Delaware County monitor.

Table 1 – 2013-2015 Annual PM_{2.5} Values for Delaware County, Pennsylvania

Monitor ID	Weighted Mean (µg/m ³)			Complete Quarters			Certified Annual Design Value 2013-2015 (µg/m ³)
	2013	2014	2015	2013	2014	2015	
420450002	11.5	12.6	10.7	4	4	4	11.6

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the PM_{2.5} ambient air quality monitoring data for the monitoring period from 2013 through 2015 for the Delaware County Area, as recorded in the AQS database. As shown from Table 1, each quarter in 2013-2015 is complete with all four quarters reporting data capture rates of at least 75 percent from the only monitor. Additionally, the certified annual design value for 2013-2015 is 11.6 µg/m³, which is below the 2012 annual primary PM_{2.5} standard of 12 µg/m³. Therefore, the Delaware County Area has attained the 2012 annual PM_{2.5} NAAQS in accordance with the requirements in 40 CFR part 50, §50.18 and appendix N.

III. Final Action

EPA is determining that the Delaware County Area has attained the 2012 annual PM_{2.5} NAAQS. As provided in 40 CFR 51.1015, finalization of this determination, suspends the requirements for this area to submit an attainment demonstration, associated RACM, RFP plan, contingency measures, and any other planning SIP revisions related to the attainment of the 2012 PM_{2.5} NAAQS, so long as this area continues to meet the standard. This determination of attainment does not constitute a redesignation to attainment. The Delaware County Area will remain designated nonattainment for the 2012 annual PM_{2.5} NAAQS until such time as EPA determines that the Delaware County Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan, pursuant to sections 107 and 175A of the CAA.

EPA is publishing this rule without prior proposal because EPA views this as a noncontroversial amendment and anticipates no adverse comment. However, in the “Proposed Rules” section of this Federal Register, EPA is publishing a separate document that will serve as the proposal to approve the determination of attainment if adverse comments are filed. This rule will be effective on **[insert date 60 days after date of publication in the Federal Register]** without further notice unless EPA receives adverse comment by **[insert date 30 days after date of publication in the Federal Register]**. If EPA receives adverse comment, EPA will publish a timely withdrawal in the Federal Register informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Statutory and Executive Order Reviews

A. General Requirements

This rulemaking action makes a determination of attainment of the 2012 PM_{2.5} NAAQS based on air quality and does not impose additional requirements. For that reason, this determination of attainment:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S.

House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

In addition, this rulemaking determining that the Delaware County Area has attained the 2012 annual PM_{2.5} NAAQS does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking action.

This determination of attainment of the 2012 annual PM_{2.5} NAAQS for the Delaware County nonattainment area may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: November 22, 2016.

Shawn M. Garvin,
Regional Administrator,
Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart NN--Pennsylvania

2. In §52.2059, add paragraph (u) to read as follows:

§52.2059 Control strategy: Particulate matter.

* * * * *

(u) *Determination of attainment.* EPA has determined based on 2013 to 2015 ambient air quality monitoring data, that the Delaware County, Pennsylvania moderate nonattainment area has attained the 2012 annual fine particulate matter (PM_{2.5}) primary national ambient air quality standard (NAAQS). This determination, in accordance with 40 CFR 51.1015, suspends the requirements for this area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning state implementation plan revisions related to attainment of the standard for as long as this area continues to meet the 2012 annual PM_{2.5} NAAQS.

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